

## Planning Commission Staff Report

February 1, 2007



**Case:** 9-22-06  
**Project Name:** Stonestreet Center  
**Location:** 9202R Lyneve Drive

**Existing Use:** Vacant  
**Proposed Use:** Retail

**Owner/Applicant:** TY & TR, LLC  
**Engineer/Designer:** Evans/Griffin, Inc.

**Project Size/Area:** 6.24 acres  
**Form District:** Neighborhood  
**Zoning Request:** R-4 to C-1

**Jurisdiction:** Louisville Metro  
**Council District:** 25 – Doug Hawkins

**Case Manager:** Kristen Millwood, Planner II

### **Request**

Change in zoning from R-4 Single Family Residential to C-1 Commercial, on property located at 9202R Lyneve Drive (Tax Block 1048 Lot 680), containing 6.24 acres and being in Louisville Metro.

### **Staff Recommendation**

Staff recommends approval of the rezoning and development plan, including the two new binding elements suggested by the neighbors and agreed to by the applicant on condition that no construction or site disturbance permits are issued until the following is adhered to:

- The applicant shall submit a tree inventory of all four inch caliper and above trees between the parking lot and the property line. Cottonwoods, Box Elders, dead/dying trees do not have to be shown on the tree inventory.
- The applicant shall work with staff Landscape Architect in determining the location of the berm along Stonestreet Road. If possible the berm could meander along the sites frontage to ensure preservation of significant

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- trees. The final location of the berm will be shown on the approved tree preservation plan and landscape plan.
- In general, all vines, underbrush, and non-native trees may be removed.
  - The retaining wall is too high to be allowed in a rear yard. The applicant will need to revise the retaining wall plan, remove the retaining wall from the plan, or apply and receive a variance for said wall before building permits for the plan are issued. The fence on top of the wall should also be removed unless the applicant can provide evidence that it is needed for safety purposes.

Staff further recommends that the retaining wall be: 1) brought into height compliance with the Land Development Code, or 2) be granted a variance by the Board of Zoning Adjustment before construction permits are issued for this site, or 3) removed from the plan.

### **Case Summary / Background**

#### **Summary**

The applicant proposes to rezone this vacant 6.24 acre site from R-4 Single Family Residential to C-1 Commercial. Two buildings will be constructed. Both will be one-story tall and contain 17,800 sf of retail space. Loading and dumpsters will be located behind the buildings and parking will be located between the buildings and Stonestreet Drive. 138 parking spaces are proposed, which is the minimum amount required per Chapter 9. Bicycle racks will be located beside the main drive aisle. One freestanding sign is proposed and it must meet Parkway dimensional standards.

This case was heard by the Planning Commission on September 7, 2006. This case was deferred at that meeting to the September 7, 2006 Planning Commission meeting. The applicant was asked to work on the following:

- Work on design and compatibility
- Applicant to work with staff to decide areas to the rear of the property for a TCPA
- Show sections of the site in relation to the surrounding land and consider a berm or retaining wall
- Lighting consideration
- Work on rear elevation
- Work on landscaping
- Consider potential C-1 uses to possibly exclude
- The front elevations
- Bring a conceptual landscape plan

The applicant also agreed to irrigate the landscaping. The applicant's representatives met with staff on August 11, 2006 to review these issues. The applicant submitted a statement on August 31, 2006 stating that they will be requesting deferral on September 7, 2006 to a non-certain date in order to continue working on the issues listed above. The applicant also stated that a

letter to adjoining property owners and those who attended the neighborhood meeting organized by Diane Newton will be notified of the request by mail.

On August 30, 2006, a neighbor hand-delivered 146 petitions (of two different letters) to staff's office regarding this case. Staff has subsequently received one more petition. The petitions oppose the rezoning proposal on the following grounds:

- there are several vacant businesses nearby
- the site location opens up the Timothy Hills neighborhood to possibly increased crime (including drug traffic, sex offenders and pedophiles) due to the night lighting and access to the neighborhood.

If the proposal does go forward, the neighbors request the following:

- that no thoroughfare connecting Stonestreet Center to the Timothy Hills subdivision be made

- a privacy fence be installed at the rear of the commercial property
- a thick tree line be kept
- that no trees be removed
- that several uses be prohibited on the site by way of binding element:
  - quick cash or personal check cashing businesses
  - blood or plasma purchasing businesses
  - methadone clinics
  - sale of alcoholic beverages
  - pawn shops
  - nothing of a pornographic nature in any audio/video recording

studio

- nothing of a pornographic nature in book stores
- nothing of a pornographic nature in boarding and lodging facilities

Staff requested transportation staff review the right-of-way dedication that would allow a street connection to this neighborhood in the future.

#### Changes since September 7, 2006 public hearing:

This case has returned to LD&T to set a new public hearing date and for an update on the case. The applicant has not submitted revised plans, but has submitted a conceptual landscape plan and new elevations. The landscape plan shows a small area of trees to remain at the rear of the site (there is a 35-foot LBA and 50-foot setback in this area). The applicant has stated that this will be changed to a TCPA. There is still a 4-foot berm at the front of the site and selected trees are proposed to remain within it.

The front and side elevations for the buildings have not changed. The applicant was asked to work on the rear elevation. It now proposes a "man door" and brick-screened dumpster enclosures with wood gates.

#### Changes since October 26, 2006 LD&T meeting:

The LD&T Committee heard this case again on October 26, 2006. At that meeting, the Committee asked the applicant to return to LD&T before a public hearing date is set with a streetscape plan that staff had requested to work on the rear elevation more, to work with staff on the front elevation, to list the tree species that are to remain at the front of the property and to provide more information regarding the retaining wall (is it in conflict with the TPA and fence)? The applicant was also asked to meet with the neighbors again prior to the public hearing.

The applicant submitted a revised plan and a streetscape painting and a section for the retaining wall. The list of tree species to remain is still needed. The front elevation has not changed but landscaping is shown on the streetscape.

Transportation staff and the Kentucky Department of Transportation have determined that the right-of-way dedication for a possible future street connection needs to remain on the plan.

#### Responses to Neighbor & Planning Commission Concerns:

- An eight-foot fence is proposed at the rear of the property.
- A TCPA is proposed at the rear of the property.
- The applicant should respond to why there are not more trees to be preserved at the rear of the site.
- The applicant should explain why only select trees are proposed to remain in the front berm area. The applicant should also submit a rendering that demonstrates the view of the site from Stonestreet Road to determine how much of the parking can be viewed under this scenario.
- It is not good planning practice to exclude certain uses from a site based on its zone. Staff would not recommend that specific uses be excluded if this site is to be rezoned.
- Transportation staff is still investigating the ROW dedication (that would allow for a street connection to the neighborhood in the future if needed) and will have further information regarding this issue prior to the public hearing.
- A response is still needed regarding site lighting.
- The applicant should explain the function of the door on the rear elevation (employee/loading use?) and show where the rest of these doors will be located. This elevation may still require some improvement.

#### Changes since the November 8, 2006 LD&T meeting:

At this meeting, the following items were discussed and/or requested:

- work be done on the rear and front elevations while taking into consideration the tree species and a streetscape plan showing this; also canopies were

suggested to dress up the front. There are canopies on a walk way, which were shown on the renderings. A suggestion was made for a canopy with signage.

-the applicant to address issues regarding the retaining wall in conflict with the TCPA.

-a list of the trees to be saved prior to the public hearing and another streetscape showing which trees will remain and which will not

-the design and enclosure of the dumpsters and a request of a detail for a retaining wall was suggested.

-a detail of the rear retaining wall since that is what neighbors will see

-the applicant was requested to meet with the neighbors over outstanding concerns

It was agreed to have a TCPA due to the trees.

The applicant met with approximately six neighbors in the mean time and has offered two additional binding elements in response to that meeting. They are as follows:

1. The following listed land uses, otherwise permitted in the C-1 Commercial zoning district, shall be prohibited in the subject property:

- a. quick cash/personal check cashing businesses
- b. pawn shops
- c. methadone clinics
- d. blood/plasma centers
- e. Any businesses engaged primarily in the sale or distribution of pornographic ("adult") books, magazines, films, accessories, etc.

2. This additional binding element shall not be amended without a public hearing with first class mail notice to first and second tier property owners.

An arborist reviewed the trees at the front of the site and concluded that the trees there have grown tall and spindly and would provide no screening whatsoever.

Updated elevations showing the requested revisions, especially in light of the statement that no trees in the front of the site worthy of being saved, and information regarding the retaining wall and the TCPA as well as a detail of the wall and dumpsters, are still needed.

Changes since January 18, 2007 Planning Commission hearing:

The applicant provided photos of what the retaining wall at the rear of the site would look like.

The applicant has stated that they are not proposing awnings on the front elevation of the building.

The applicant's arborist met with staff landscape architect on site on January 25, 2007 to discuss the retention of trees at the front of the site. Her conclusions are listed as conditions of approval at the beginning of this report.

### ***Circulation***

A drive aisle will divide the 2 structures and it will stub into an R-4 property to the north. A binding element has been added stating that a cross over/access easement will be required if the property to the north is ever developed for a nonresidential use. A railroad adjacent to the west property line prohibits additional stubs. Right-of-way will be dedicated to Lyneve Drive, extending it to Stonestreet Road. A left turn lane will be added to Stonestreet, with pavement widening, restriping, and shoulder improvements.

### ***Setbacks/Screening***

The structures are setback from Stonestreet Road at a distance greater than 80 feet, which is the maximum distance permitted in this form district. A variance is avoided by providing specific site designs per Section 5.1.9 Maximum Setback Alternatives. This section states that sites may contain structures that exceed maximum setbacks as long as a 4' tall berm screens parking, a 15' wide landscaped area is provided linking the public street to the structures, and a 5' wide sidewalk is contained within this 15' wide landscaped area, all of which the applicant proposes.

The site also contains the required 50' setback/LBA at the rear of the site where loading faces residential lots and a 30' required setback/LBA where no loading faces a residential lot. The 30' wide parkway buffer area is exceeded along Stonestreet Road, where a 45'-60' wide buffer is proposed, containing the 4' tall berm. Tree Canopy Buffer Areas will be provided throughout the site in order to preserve existing wooded areas.

### ***Site Context***

The site is presently a heavily wooded lot. A single family lot abuts the north property line, a railroad is to the west with commercial lots to the west of it, a church is located south of Stonestreet Road, and a single family lot is located across Lyneve Drive.

### **Site Inspection Comments & Responses**

1. Need market study for more retail in area – *See findings below.*
2. Need to respect parkway standards – *They are met.*
3. Move buildings forward, less parking in front of site.
4. Better design and layout of buildings – *Building design has been resubmitted and reviewed by LD&T.*
5. Extensive landscaping along residential area to the north – *This will be noted for landscape architect when landscape plan is submitted.*

## **Staff Findings/Technical Review**

### **Relationship to Comprehensive Plan – Cornerstone 2020 Plan Elements**

Community Form – the proposed development is located near the intersection of Dixie Highway, a major arterial, and Stonestreet Road, a minor arterial, with a high level of connection to surrounding residential areas. This form district allows higher density/intensity uses provided that the site is located at arterial-level roadways and is compatible with surrounding land uses. Pedestrian and vehicular connections, including sidewalks and shared parking are proposed to increase access to the development. The subject property, while zoned residentially, is vacant and has been so for several years. It faces institutional uses and there have been many changes of an economic, physical and social nature in the area, such as population growth, construction of the Gene Snyder freeway and development along Dixie Highway.

Marketplace – this site is located at the intersection of two major road systems which makes it accessible to employment and population centers.

Mobility Transportation – several improvements are proposed to be made as a part of this development, including sidewalk installation, extension of Lyneve Drive and a left turn lane into the site on Stonestreet Road. Two TARC routes run adjacent to the property.

Livability/Environment - This is not a nuisance use and will include landscaping and buffering. There are large protected tree canopy areas proposed on site.

### **Relationship to Neighborhood, Small Area, Corridor or Other Plan(s)**

None.

### **Technical Issues**

1. The applicant must better delineate the Lyneve Drive dedication (use arrows).
2. The height of the retaining wall needs to be shown on the plan.
3. The retaining wall is too high to be allowed in a rear yard. The applicant will need to revise the retaining wall plan, remove the retaining wall from the plan, or apply and receive a variance for said wall before building permits for the plan are issued. The fence on top of the wall should also be removed unless the applicant can provide evidence that it is needed for safety purposes.
4. The 8' screen listed on the plan needs to be changed to show an 8' wood fence.
5. Proposed sidewalks on one side of Lyneve Drive are acceptable.
6. A Tree Canopy Preservation Plan will be required before plan transmittal, along with a minor plat to dedicate right-of-way. (Binding Element #6d & #6b)

7. A Wetlands Determination and Mitigation is required from the US Army Corp of Engineers before construction approval. (Binding Element #6e)
8. A final traffic analysis has been filed and approved by transportation staff.
9. A major subdivision plat will be needed if this case is approved for roadway connection.
10. A sidewalk along the east property line bounding the Lyneve Drive dedication was agreed to by the applicant at the June 8, 2006 LD&T meeting.
11. The applicant provided information on commercial vacancies in the area in response to a question at the LD&T meeting:  
June 29, 2006 – Dixie Highway between East Pages Lane and Valley Station Road:

10019 Dixie Highway

New strip center being built; now leasing. The building has 8700 sq. ft. total.

9070 Dixie Highway – Park Place Shopping Center

8,250 sq. ft. for lease. Formerly Sofa Express.

9208-104 Dixie Highway

1900 sq. ft. for lease. Formerly Red Wing Shoes.

12. The TCPA at the rear of the property needs to be shown on the site plan.

***Land Use / Zoning District / Form District***

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b><i>Subject</i></b>			
<b>Existing</b>	Single Family Residential	R-4	NFD
<b>Proposed</b>	Retail Center	C-1	NFD
<b><i>Surrounding</i></b>			
<b>North</b>	Single Family Residential	R-4	NFD
<b>South</b>	Single Family Residential	R-5	NFD
<b>East</b>	Single Family Residential	R-4	NFD
<b>West</b>	Railroad & Retail	C-1 & C-2	SMC

**Project History**

<b>Project History</b>	<b>Date</b>	<b>Issues addressed / discussion / changes to proposal</b>
Pre-application meeting	7/25/06	Screening, buffering, setbacks

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Project submittal	5/9/06	
Staff review	5/23/06	Screening, buffering, setbacks, tech. items
Site Inspection Committee	6/2/06	
LD&T review# 1	6/8/06	Screening, buffering, setbacks, tech. items
Public hearing #1	8/3/06	Continued to September 7, 2006 public hearing
Public hearing# 2	9/7/06	Indefinite deferral granted
LD&T review #2	10/26/06	Outstanding issues
LD&T review# 3	11/9/06	Outstanding issues
Public hearing# 3	1/18/07	Deferral to 2/1/07 at applicant request
Public hearing# 4	2/1/07	

### **Standard of Review**

Criteria for granting the proposed rezoning:

1. The proposed rezoning complies with the applicable guidelines and policies Cornerstone 2020; **or**
2. The existing zoning classification is inappropriate and the proposed classification is appropriate; **or**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

### **Attached Documents / Information**

1. Zoning Map
2. Aerial Map

### **Notification**

The following forms of notification were provided pertaining to this proposal:

<b>Date</b>	<b>Description</b>	<b>Recipients</b>
5/22/06	LD&T notice	APO & Neighborhood Groups
6/29/06	Public Hearing Notice	APO & Neighborhood Groups
10/12/06	LD&T notice	APO & Neighborhood Groups
	Public hearing notice	APO & Neighborhood Groups

### **Proposed Binding Elements – Unique to this Case, Docket No. 9-22-06**

1. The following listed land uses, otherwise permitted in the C-1 Commercial zoning district, shall be prohibited in the subject property:
  - f. quick cash/personal check cashing businesses
  - g. pawn shops
  - h. methadone clinics

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- i. blood/plasma centers
  - j. any businesses engaged primarily in the sale or distribution of pornographic ("adult") books, magazines, films, accessories, etc.
- 2. This additional binding element shall not be amended without a public hearing with first class mail notice to first and second tier property owners.

**Proposed Standard Binding Elements - Docket No. 9-22-06**

- 1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
- 2. The development shall not exceed 34,560 square feet of gross floor area.
- 3. Signs shall be in accordance with Parkway Standards.
- 4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
- 5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
- 6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. A minor subdivision plat shall be recorded dedicating additional right-of-way. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be

- implemented prior to occupancy of the site and shall be maintained thereafter.
- d. A Tree Canopy Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. A Wetlands Determination and Mitigation is required from the US Army Corp of Engineers before construction approval.
7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
  8. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system audible beyond the property line.
  9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
  10. The property owner shall provide a cross over access easement if the property to the north is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
  11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 18, 2007 Planning Commission meeting.
  12. No idling of trucks between the rear of the shopping center and adjacent single-family residences. No overnight idling of trucks shall be permitted on-site.
  13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits

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shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.

14. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
16. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree preservation areas must contain the following notes:

1. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Tree in these areas may be removed during construction of homes or buildings on individual lots.
2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.

All binding elements stated in this report are accepted in total without exception by the entity requesting approval of this development item.

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Name

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Title

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